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16 INTERNATIONAL

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
18 FOR THE COUNTY OF MARIN

19 CHURCH OF SCIENTOLOGY )  
20 INTERNATIONAL, a California not- )  
21 for-profit religious corporation, )

22 Plaintiff,

23 vs.

24 GERALD ARMSTRONG; DOES 1 through )  
25 25, inclusive, )

26 Defendants. )

RECEIVED  
JAN 23 1995  
HUB LAW OFFICES

CASE NO. 157 680

[CONSOLIDATED]

) CHURCH OF SCIENTOLOGY  
) INTERNATIONAL'S MEMORANDUM  
) OF POINTS AND AUTHORITIES  
) IN SUPPORT OF EX PARTE  
) APPLICATION FOR AN ORDER  
) STRIKING ARMSTRONG'S LATE-  
) FILED SUPPLEMENTAL  
) DECLARATION IN OPPOSITION  
) TO PLAINTIFF'S MOTION FOR  
) SUMMARY ADJUDICATION OF THE  
) FOURTH, SIXTH AND ELEVENTH  
) CAUSES OF ACTION OF SECOND  
) AMENDED COMPLAINT, OR, IN  
) THE ALTERNATIVE, FOR AN  
) ORDER SEALING EXHIBITS A  
) AND M TO SAID DECLARATION;  
) REQUEST FOR SANCTIONS  
) [C.C.P. § 437c(i)]

) DATE: January 23, 1995

) TIME: 9:30 a.m.

) DEPT: 1

) TRIAL DATE: May 18, 1995

I.  
INTRODUCTION

1  
2  
3 This application seeks to strike an untimely declaration of  
4 Gerald Armstrong filed in support of plaintiff's pending motion  
5 for summary adjudication or, in the alternative, the sealing of  
6 two exhibits to that late-filed declaration (hereinafter, "the  
7 Declaration"). The Declaration was served on plaintiff, by mail,  
8 the day before plaintiff's reply to Armstrong's opposition was  
9 due to be filed -- six days after Armstrong's filing deadline had  
10 passed. It consists of a lengthy rendition by Armstrong of his  
11 claimed conversations with God concerning the contract which is  
12 at issue in this case, purported "authentication" of 14 exhibits  
13 which he hopes will help him demonstrate that God supports him,  
14 and an assertion that he will violate the preliminary injunction  
15 entered in this case if he feels "called upon" to do so because  
16 "the Sohigian injunction is itself a violation of a higher order,  
17 God's Injunction to love each other, and surely to help those  
18 oppressed." [Supp.Dec. at 8] The Declaration is not referenced  
19 at all in Armstrong's timely filed opposition papers, and it  
20 contributes absolutely nothing relevant to that motion.

21 In the event that the Court does not simply strike the  
22 declaration outright, plaintiff seeks to have two of the exhibits  
23 to the motion placed under seal pursuant to Civil Code § 3426.5.  
24 Exhibits A and M are altered or re-created versions of portions  
25 of Scientology's "Advanced Technology," highly sacred scriptures  
26 which are maintained by plaintiff as confidential trade secrets.  
27 They are not relevant to any matters at issue in the case, and  
28 were filed by Armstrong to harass plaintiff and create confusion

1 and delay. As this Court held in September, 1994, "The religious  
2 beliefs of the parties are irrelevant in determining the issues  
3 in this action." [Ex. A to Declaration of Laurie J. Bartilson.]

4 Plaintiff requests that, if this Court does not strike the  
5 Declaration and the Exhibits in their entirety, that the Court  
6 maintain Exhibits A and M only under seal. Plaintiff also  
7 requests that sanctions be imposed against Armstrong and his  
8 attorney, Ford Greene, in light of their obvious and calculated  
9 bad faith filing of the Declaration.

10 II.

11 THE DECLARATION WAS NOT FILED OR SERVED IN A TIMELY FASHION, IS  
12 NOT MADE ON PERSONAL KNOWLEDGE, AND OFFERS NO EVIDENCE THAT IS  
13 RELEVANT TO PLAINTIFF'S SUMMARY ADJUDICATION MOTION

14 Code of Civil Procedure § 437c(b) provides in relevant part  
15 that, "Any opposition to [a motion for summary adjudication]  
16 shall be served and filed not less than 14 days preceding the  
17 noticed or continued date of the hearing, unless the court for  
18 good cause orders otherwise."

19 Plaintiff's pending motion for summary adjudication was  
20 filed with this Court, and served on defendant Armstrong, on  
21 November 16, 1994. Armstrong's counsel asked for, and received,  
22 an extension of the date for the hearing on the motion to January  
23 27, 1995. Armstrong thus had in excess of two months to prepare  
24 his opposition to the motion.<sup>2</sup>

25 On January 19, 1995, at the close of the business day,  
26 defendant Gerald Armstrong faxed to plaintiff's attorney, Laurie

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27 <sup>2</sup> In reality, Armstrong had more than 22 months to prepare. A  
28 substantially similar motion was first filed in Los Angeles in  
March 2, 1993, and then removed from calendar while Armstrong  
attempted unsuccessfully to overturn the preliminary injunction  
entered by Judge Sohigian.

1 Bartilson, "Armstrong's Supplemental Declaration in Opposition to  
2 Scientology's Motion For Summary Adjudication of the Fourth,  
3 Sixth and Eleventh Causes of Action of Second Amended Complaint."  
4 The Declaration listed 14 exhibits, but none were attached. The  
5 proof of service claimed that the Declaration was served by mail  
6 on January 19, 1995. [Bartilson Dec., ¶ 2.]

7 Armstrong's opposition papers were due to be filed with the  
8 Court and served on plaintiff on January 13, 1995. Plaintiff's  
9 reply was due on January 20, 1995. By filing the Declaration the  
10 day before plaintiff's reply was due, and faxing to plaintiff,  
11 late in the day, the cover declaration only, Armstrong made  
12 certain that it was physically impossible for plaintiff to  
13 respond to his late filing in plaintiff's reply. He has no  
14 excuse for the late filing, particularly in light of the lengthy  
15 time he has had to prepare and serve his opposition to the  
16 motion.

17 Moreover, the Declaration and its supporting documents are  
18 not mentioned by Armstrong's attorney anywhere in the opposing  
19 papers. Instead, the entire subject matter of the Declaration is  
20 Armstrong's religious beliefs and what he contends are the  
21 religious beliefs of plaintiff.<sup>3</sup> However, this Court has  
22 already held that the religious beliefs of the parties are not  
23 relevant to this action. [Bartilson Dec., Ex. A.] For this

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24 <sup>3</sup> For example, Armstrong devotes a substantial portion of his  
25 Declaration to (1) insisting that Scientology theology preaches  
26 that God does not exist (it does not); (2) arguing that  
27 Scientology is not a religion but "idolatry" (all courts and even  
28 the IRS disagree with that characterization); and (3) proclaiming  
that he alone understands and is following Scientology's creed.  
None of these matters has any bearing on whether or not Armstrong  
breached his settlement agreement with plaintiff.

1 reason alone, the Declaration should be stricken.

2 Armstrong's Declaration, and the exhibits which he purports  
3 to authenticate, are also inadmissible as evidence. C.C.P.

4 § 437c(d) provides, in relevant part, that

5 Supporting and opposing affidavits or declarations  
6 shall be made by any person on personal knowledge,  
7 shall set forth admissible evidence, and shall show  
8 affirmatively that the affiant is competent to testify  
9 to the matters stated in the affidavits or  
10 declarations.

11 Armstrong does not aver that his Declaration is made on  
12 personal knowledge, which the statute plainly requires. Further,  
13 much of the Declaration is hearsay -- Armstrong's testimony as to  
14 what God purportedly said to him. Finally, the Declaration lacks  
15 any showing that Armstrong is competent to testify about the  
16 matters contained in the Declaration. If anything, the  
17 Declaration casts serious doubt on whether Armstrong is competent  
18 as a witness.

19 In short, the Declaration was late-filed, without permission  
20 of the Court, and no good cause exists to permit it to be  
21 considered. It should, accordingly, be stricken.

22 **III.**

23 **IN THE ALTERNATIVE, THE COURT SHOULD SEAL EXHIBITS A AND M**  
24 **BECAUSE THEY ARE RE-CREATED VERSIONS OF PLAINTIFF'S TRADE SECRETS**

25 Armstrong claims in his Declaration that Exhibits A and M  
26 are copies of "OT III" and/or "Upper Level" materials. "Upper  
27 Level" scripture (known as the "Advanced Technology") is  
28 scripture which is the product of some of L. Ron Hubbard's  
advanced researches into the human spirit. The designation "OT  
III" stands for "Operating Thetan, Level 3," and is part of

1 Scientology's Advanced Technology.<sup>4</sup> Scientology theology  
2 provides that the Advanced Technology is kept confidential, and  
3 disclosed to Scientology parishioners only when those  
4 parishioners have completed the earlier necessary steps in  
5 Scientology's path to greater spiritual awareness. As  
6 demonstrated below, these Exhibits are re-created versions of  
7 trade secrets that are kept confidential by the Church, and that  
8 must not be kept in the Court's public files.

9 The California Civil Code provides that trade secrets, or  
10 even matters alleged to be trade secrets, must be protected while  
11 they are involved in litigation:

12 In an action under this title, a court shall  
13 preserve the secrecy of an alleged trade secret by  
14 reasonable means, which may include granting protective  
15 orders in connection with discovery proceedings,  
16 holding in-camera hearings, sealing the records of the  
17 action, and ordering any person involved in the  
18 litigation not to disclose an alleged trade secret  
19 without prior court approval.

20 Civil Code § 3426.5 (emphasis supplied).

21 Armstrong has filed Exhibits A and M in this Court's public  
22 files solely to harass plaintiff. He is well aware of  
23 plaintiff's interest in the documents as trade secrets. Indeed,  
24 the materials in question have been judicially recognized as  
25 trade secrets under Civil Code § 3426.1 in Bridge Publications  
26 Inc. v. Vien (S.D.Cal. 1993) 827 F.Supp. 629 at 633, citing

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27 <sup>4</sup> Scientologists refer to the person himself, the being, as a  
28 "thetan." The definition of the state of "Operating Thetan" is  
"knowing and willing cause over life, thought, matter, energy,  
space and time." [Ex. B to Declaration of Laurie Bartilson, What  
is Scientology?, at 222.] To be permitted access to the  
confidential Advanced Technology, through which a person achieves  
the state of Operating Thetan, the person must progress first  
through all the lower, gradient levels of Scientology religious  
counseling. [Id. at 222-223.]

1 Religious Technology Center v. Scott (9th Cir. 1989) 869 F.2d  
2 1306, 1309-10 (holding that the Advanced Technology can be  
3 protectable as a trade secret).<sup>5</sup> The documents in Armstrong's  
4 Exhibit A and M are re-creations of portions of Advanced  
5 Technology which the Vien court has already adjudicated to be  
6 trade secrets as a matter of law.

7 Armstrong's interjections of these materials into the  
8 Court's files is objectionable not merely because they are trade  
9 secrets, but also because a church has a generalized interest in  
10 maintaining confidentiality of internal documents both for itself  
11 and its parishioners. U.S. v. Hubbard (D.C.Cir. 1980) 650 F.2d  
12 293, 306-07. Exhibits A and M are not the subject of this  
13 litigation. Armstrong obviously has filed these documents  
14 intentionally only because he knows it will upset plaintiff's  
15 parishioners and staff. Exhibits A and M are trade secrets, and  
16 if they are not stricken entirely by the Court, they at least  
17 should be placed under seal.

18 **IV.**  
19 **CONCLUSION**

20 The Supplemental Declaration filed by Armstrong is untimely,  
21 irrelevant, and seeks to expose plaintiff's trade secrets.  
22 Plaintiff asks this Court to strike the Declaration and its

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23 <sup>5</sup> In Vien, the Court granted summary judgment for trade secret  
24 misappropriation, finding these confidential scriptures to be  
25 trade secrets as a matter of law. Id. at 633. The Vien court  
26 specifically recognized that the confidentiality and security  
27 requirements of Civil Code § 3426.1 had been met with respect to  
28 the Advanced Technology, and that it had independent economic  
value. 827 F.Supp. at 633, quoting Murdock v. Commonwealth of  
Pennsylvania (1943) 319 U.S. 105, 111, 63 S.Ct. 870, 874, 87  
L.Ed. 1292; Cal. Civ. Code § 3426.1(d).

1 exhibits or, in the alternative, place Exhibits A and M under a  
2 protective seal. Plaintiff also requests that Armstrong and his  
3 attorney, Ford Greene, be sanctioned under C.C.P. § 437c(i). The  
4 total lack of relevance of the Declaration, its untimeliness, its  
5 omission from the opposition, and the gratuitous filing of trade  
6 secrets materials with the Declaration highlight that it can only  
7 have been a calculated filing in bad faith.

8 Dated: January 23, 1995

Respectfully submitted,

9 Andrew H. Wilson  
10 WILSON, RYAN & CAMPILONGO

11 MOXON & BARTILSON

12  
13 By: \_\_\_\_\_  
14 Laurie J. Bartilson  
15 Attorneys for Plaintiff  
16 CHURCH OF SCIENTOLOGY INTERNATIONAL  
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PROOF OF SERVICE

STATE OF CALIFORNIA            )  
  )  ss.  
COUNTY OF LOS ANGELES        )

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On January 23, 1995, I served the foregoing document described as CHURCH OF SCIENTOLOGY INTERNATIONAL'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION FOR AN ORDER STRIKING ARMSTRONG'S LATE FILED SUPPLEMENTAL DECLARATION IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION OF THE FOURTH, SIXTH AND ELEVENTH CAUSES OF ACTION OF SECOND AMENDED COMPLAINT, OR, IN THE ALTERNATIVE, FOR AN ORDER SEALING EXHIBITS A AND M TO SAID DECLARATION on interested parties in this action,

by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

by placing  the original  true copies thereof in sealed envelopes addressed as follows:

FORD GREENE  
HUB Law Offices  
711 Sir Francis Drake Blvd.  
San Anselmo, CA 94960-1949

BY FAX AND MAIL

\*I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party

served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on January 23, 1995 at Los Angeles, California.

**\*\* (BY PERSONAL SERVICE)** I delivered such envelopes by hand to the offices of the addressees.

Executed on \_\_\_\_\_ at Los Angeles, California.

(State) I declare under penalty of the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Signature

\* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

\*\* (For personal service signature must be that of messenger)

PROOF OF SERVICE

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  )    ss.  
COUNTY OF LOS ANGELES        )

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by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

by placing  the original  true copies thereof in sealed envelopes addressed as follows:

MICHAEL WALTON  
700 Larkspur Landing Circle  
Suite 120  
Larkspur, CA 94939

BY MAIL

\*I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party